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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,503	06/28/2001	Craig Bienick		3221

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EXAMINER

ANDERSON, GERALD A

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,503

Applicant(s)

BIENICK, CRAIG

Examiner

JERRY A ANDERSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2003 and 25 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 20, 21 and 28-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19, 22-27 and 62-65 is/are rejected.
- 7) ☒ Claim(s) 1-16 and 47-61 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Response to Arguments***

Applicant's arguments with respect to claim 17 have been considered but are moot in view of the new ground(s) of rejection. Because of the amendments to the claims new art has been cited. The applicant argues that Herrmann cannot be combined with Maier. That Maier discloses a plate with a surrounding frame is safe and sturdy and prevents spills running over the edge. The Examiner disagrees because Hermann teaches that it is well known to provide a plate or shelf with a partial, front and rear edge frame or trim. Trim is more than decorative because it protects the edge of the plate. This makes the plate safer and sturdier than a plate without trim. It does not stop a spill running over the edge but neither does the applicant's invention. It is well settled in case law that to remove an element, in this case the side edge rim, and its function, spill resistance, is an obvious matter of design choice for one having an ordinary skill in the art.

Election/Restrictions

Applicant's election without traverse of Figures 1-5 in Paper No. 6 is acknowledged. Claims 20, 21, 28-36 have been withdrawn from consideration because the applicant has not included these claims in the group readable on the elected species. The claims to be examined are limited to those claims defining elements of the invention clearly shown by the elected Figures 1-5. Therefore amended claims 37-46, drawn to Figure 9, have been withdrawn from consideration.

Claim Rejections - 35 USC § 112

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 62-65 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a glass shelf with edges having borders, does not reasonably provide enablement for a shelf with only corner portions having a border. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The disclosure fails to define borders at shelf corner portions only. It cannot be determined from the disclosure where these corner portions begin and end except as they relate to borders that covers the entire front and rear edge of the shelf.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19, 22-27 and 47-61 are objected to under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The language of the claims must clearly distinguish the elements of the claims. Therefore the ends of must be clearly distinguished. Terms which make the claims indefinite include: "having a respective" in claim 1 lines 9, 10 and ^{claim} 17 lines 7, 8; suggest changing this to - - having respectively a - -; "conductivity" in claims 1 and 17 because conduction is the transmission, in this case of heat, through a medium without perceptible motion of the

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medium itself. In this case the arrangement of the shelf and compartment allows air to flow around the shelf and throughout the compartment. Terms that lack proper antecedent basis in the claims include: "said side edge corner portions" in claims 18 and 19, "said rear border channel" in claims 22 and 26, suggest - - said rear edge-receiving channel - -; "said front border channel" in claim 22, suggest - - said front edge-receiving channel - -.

Claims 17-19 and 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: claim 17 defines the invention as a slidable shelf but fails to define any sliding structure elements, the body of the claim defines "conductivity within an associated refrigerator compartment" thus the scope of the claim is indefinite and if the compartment is part of the invention it lacks means to support the shelf.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 17, as presented, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Poulsen. Paulsen shows a shelf 33 with front and rear borders 39 and 27

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Paddock

Allowable Subject Matter

Claims ³~~1~~-16, 18, 19, 22-27 and 47-61 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of any base claim and any intervening claims.

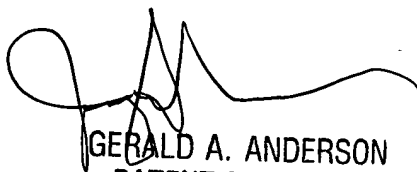
This action is not FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Anderson whose telephone number is 703 038 2202. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703 308 2468. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 3597 for regular communications and 703 306 4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 2197.

Jaa
June 30, 2003


GERALD A. ANDERSON
PATENT EXAMINER